

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THOMAS WITT,

Petitioner,

10 Civ. 9180 (JGK)

- against -

MEMORANDUM OPINION  
AND ORDER

STEVEN E. RACETTE,

Respondent.

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JOHN G. KOELTL, District Judge:

The Court has received the attached application for the appointment of counsel. Petitioners do not have a constitutional right to counsel in a collateral challenge to a conviction or sentence. See Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). The Court has the discretion to appoint counsel to represent a pro se habeas petitioner "[w]henver . . . the interests of justice so require." 18 U.S.C. § 3006A(a)(2).

The Court of Appeals for the Second Circuit has articulated factors that should guide the Court's discretion to appoint counsel to represent an indigent civil litigant under 28 U.S.C. § 1915. See Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986); Jackson v. Moscicki, No. 99 Civ. 2427 (JGK), 2000 WL 511642, at \*4 (S.D.N.Y. Apr. 27, 2000). For the Court to order the appointment of counsel, the litigant must, as a threshold matter, demonstrate that his claim has substance or a likelihood of success on the merits. See Hodge, 802 F.2d at 61-62. Only

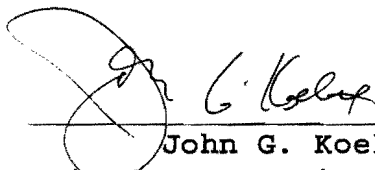
then can the Court consider the other factors appropriate to determination of whether counsel should be appointed: the litigant's "ability to obtain representation independently, and his ability to handle the case without assistance in the light of the required factual investigation, the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity." Cooper v. A. Sargenti Co., Inc., 877 F.2d 170, 172 (2d Cir. 1989). As this Court has previously noted, "[t]hese are also useful standards to be applied in determining whether the interests of justice require the appointment of counsel for a petitioner in a habeas corpus proceeding." Jackson, 2000 WL 511642 at \*4.

At this point, the petitioner has failed to show that his claims are likely to have merit, and the application for the appointment of counsel is therefore **denied without prejudice**. The petitioner can contact the Pro Se Office by telephone at 212-805-0175 or by mail at 500 Pearl Street, Room 230, New York, New York, 10007, for assistance with respect to Court procedures.

The Clerk is directed to close **Docket No. 2**.

**SO ORDERED.**

**Dated:** New York, New York  
April 19, 2011

  
\_\_\_\_\_  
John G. Koeltl  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THOMAS WITT

(In the space above enter the full name(s) of the petitioner(s).)

-against-

STEVEN E. RACETTE, Superintendent

EIMIRA Correctional Facility

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, THOMAS WITT, (print or type your name) am a party in this case and am unable to afford the services of an attorney. I hereby request the Court to grant my request for counsel to represent me in this proceedings.

In support of my application, I provide the following information:

A. Explain why you feel you need a lawyer in this case. (Use additional paper if necessary)

Representation of counsel is needed to litigate  
petitioner petition in a way that the courts would  
fully understand. Petitioner is not a lawyer, and do not wish to

B. Explain what steps you have taken to find an attorney and with what results. (Use additional paper if necessary)

Petitioner do not have the finance to seek professional  
assistance. The only steps taken is petitioner's motion for  
"Forme Pauperis."

C. If you need a lawyer who speaks in a language other than English, state what language you speak:

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 12/23/10

10 Civ. 9180 (JGR) (ALE)

APPLICATION FOR THE COURT  
TO REQUEST COUNSEL  
PURSUANT TO 18 U.S.C. § 3006A(g)

PRO SE OFFICE  
KJ

2. In further support of my application, I declare that (check appropriate box):



I have previously filed a Request to Proceed *In Forma Pauperis* application in this proceeding, and it is a true and correct representation of my current financial status.



I have not previously filed a Request to Proceed *In Forma Pauperis* in this proceeding, and now attach an original Request to Proceed *In Forma Pauperis* application detailing my financial status.



I have previously filed a Request to Proceed *In Forma Pauperis* application in this proceeding, however, my financial status has changed. I have attached another Request to Proceed *In Forma Pauperis* application showing my current financial status.

3. I understand that if a lawyer volunteers to represent me and that lawyer learns that I can afford to pay for a lawyer, the lawyer may give this information to the Court.

4. I understand that if my answers on this application are false, my case may be dismissed.

5. I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12/20th/2010

Thomas Witt  
Signature

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKTHOMAS WITT

In the space above enter the full name(s) of the plaintiff(s)/petitioner(s.)

10 Civ. 9180 ( ) ( )

-against-

**REQUEST TO PROCEED  
IN FORMA PAUPERIS**STEVEN E. RACETTE, Superintendent  
ELMIRA CORRECTIONAL FACILITY

In the space above enter the full name(s) of the defendant(s)/respondent(s.)

I, THOMAS WITT, (print or type your name) am the plaintiff/petitioner in the above entitled case and I hereby request to proceed *in forma pauperis* and without being required to prepay fees or costs or give security. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

1. If you are presently employed:

- a) give the name and address of your employer
- b) state the amount of your earnings per month

Idle pay / Rec pay (MHU)

2. If you are NOT PRESENTLY EMPLOYED:

- a) state the date of start and termination of your last employment
- b) state your earnings per month

**YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED.**

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

Family Amount N/Aa) Are you receiving any public benefits? ☒ No. ☐ Yes, \$ \_\_\_\_\_.b) Do you receive any income from any other source? ☒ No. ☐ Yes, \$ \_\_\_\_\_.

4. Do you have any money, including any money in a checking or savings account? If so, how much?

☒ No. ☐ Yes, \$ \_\_\_\_\_.

5. Do you own any apartment, house, or building, stock, bonds, notes, automobiles or other property? If the answer is yes, describe the property and state its approximate value.

☒ No. ☐ Yes, \$ \_\_\_\_\_.

6. Do you pay for rent or for a mortgage? If so, how much each month?

☒ No. ☐ Yes, \_\_\_\_\_.

7. List the person(s) that you pay money to support and the amount you pay each month.

\_\_\_\_\_  
\_\_\_\_\_

8. State any special financial circumstances which the Court should consider.

Since being arrested, I have never been able to  
retain counsel, courts appointed counsel to me  
\_\_\_\_\_

I understand that the Court shall dismiss this case if I give a false answer to any questions in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 20th day of December, 2010.  
date month year

Thomas Witt  
Signature

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKTHOMAS WITT

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

10 Civ. 9180 ( ) ( )

- against -

## AFFIRMATION OF SERVICE

STEVEN E. RACETTE, SuperintendentElmira Correctional Facility

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, THOMAS WITT, declare under penalty of perjury that I have  
(name)served a copy of the attached Request TO Proceed IN FORMA Pauperis  
(document you are serving)upon Ruby Krajick (Court Clerk) whose address is UNITED STATES  
(name of person served)DISTRICT COURT, 500 Pearl Street, ROOM 230, NY, NY 10007  
(where you served document)by Mail  
(how you served document: For example - personal delivery, mail, overnight express, etc.)Dated: Elmira, NY  
(town/city) (state)December 20th 2010  
(month) (day) (year)

Signature

Elmira Corr. Fac. P.O. Box 500  
AddressElmira, NY 14  
City, State14902-0500  
Zip Code

Telephone Number